THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.19399 of 2002

Dated: 31-08-2007

Between:

Sajjan Singh and others.

..... PETITIONERS

AND

The Secretary (Revenue), Urban Land Ceiling,
Hyderabad, and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.19399 of 2002

ORDER:

Late Bindalal and his four sons – petitioners 1 to 4 herein filed separate declarations under Section 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act, for brevity) before third respondent, namely, the Special Officer & Competent Authority, Urban Land Ceiling. Each of them claimed a share in vacant land comprised in survey Nos.135/p (824 sq. meters), 228/p (8,903.08 sq. meters), 270/2 (2,529.25 sq. meters) and 273/1/2 (607.02 sq. meters)
(in total – 12,863.35 sq. meters) situated at Guddimalkapur Village of Hyderabad Urban Agglomeration. Admittedly Bindalal and his four sons constituted a Hindu undivided family and there was no division/partition *de jure* o r *de facto*. Be that as it is, third respondent processed the declarations, being C.C.Nos.879 to 883 of 1976, and issued a draft statement under Section 8(1) of the Act together with notice under Section 8(3) of the Act on 18.12.1990. In the draft statement, third respondent allowed retainable area of 1,000 sq. meters under Section 4(1)(b) of the Act and provisionally determined the surplus vacant land to an extent of 11.863.35 sq. meters.

After receiving the draft statement, Bindalal and his four sons filed objection petitions individually raising common objections. Be it noted that after filing the declaration Bindalal died and his wife – fifth petitioner represented her husband before third respondent. Third respondent considered the objections and having noticed that an extent of 4,957.59 sq. meters in survey No.228 and an extent of 2697.42 sq. meters in survey Nos.270/2 and 273/1/2 (in total – 7,655.01 sq. meters) was acquired, the same was deleted from the surplus land and 5,208.34 sq. meters was adopted for computation. An extent of 343.40 sq. meters being the area of irrigation well and 533.44 sq. meters, the land covered by cattle shed and the land appurtenant thereto were deducted and an extent of 4,331.50 sq. meters was taken up for computation. Third respondent came to the conclusion that fourth petitioner herein was minor son of Bindalal and therefore, not entitled for any separate unit. Therefore, he allowed retainable area of 866.10 sq. meters each to the petitioners 1 to 3. An extent of 1,732.20 sq. meters was computed to the family unit consisting of fourth petitioner – minor at the relevant date and fifth petitioner – wife of late Bindalal. In this third respondent allowed retainable area to an extent of 1,000 sq. meters under Section 4(1)(b) of the Act and declared an extent of 733.20 sq. meters in survey Nos.270/2, 273/1/2 in T.S.No.5/1(P) as surplus vacant land. Accordingly third respondent issued final statement and passed final orders vide

proceedings dated 07.04.1992. Aggrieved by the same, the petitioners preferred an appeal under Section 33 of the Act before second respondent, who dismissed the same on 27.06.2002. This is assailed in instant writ petition.

The learned counsel for the petitioners submits that fourth petitioner was major as on 17.02.1976 when the Act came into force and therefore, he is entitled to separate retainable area as in the definition of 'family' contained in Section 2(f) read with Section 4(7) of the Act. Nextly he contends that abundant evidence was produced i.e., school leaving certificate dated 19.06.1967 showing the date of birth of fourth petitioner as 20.03.1953. Therefore, the respondents decided the issue erroneously. Alternatively he submits that even if the family was entitled to the retainable unit of 1,000 sq. meters each, having determined the total vacant land for the purpose of computation as 4,331.50 sq. meters, the respondents ought to have allowed 1,000 sq. meters each declaring only 331.50 sq. meters as surplus vacant land out side the ceiling unit. The Special Deputy Collector in the office of third respondent filed a counter-affidavit denying the petition averments and these contentions are reiterated by the learned Special Government Pleader for Urban Land Ceiling Cases.

Section 2(f) of the Act defines 'family' in relation to a person, means the individual, the wife or husband, as the case may be, of such individual and their unmarried minor children. Therefore, the text and the context does not even remotely suggest that the major children, whether sons or daughters, are also included in the definition of 'family'. Secondly Section 2(i) of the Act defines 'person', which includes an individual, a family, a firm, a company or an association or body of individuals, whether incorporated or not. Coming to Section 4(1) of the Act, every person is entitled to hold vacant land in Hyderabad Urban Agglomeration not exceeding 1,000 sq. meters. Section 4(7) of the Act deals with computation of ceiling limit in respect of vacant land owned by Hindu undivided family. It would be to the effect that if a person is a Member of Hindu undivided family, he shall be entitled to the vacant land to which he would have been entitled, had there been a division and such share would have fallen to him. If Bindalal and his three major sons had divided the property, each of them would have got 1,000 sq. meters. In that view of the matter, the computation of third respondent as confirmed by second respondent is erroneous. To that extent the error needs to be corrected.

Bindalal filed an affidavit before third respondent to the effect that fourth petitioner, his fourth son, was aged sixteen years as on 05.12.1977. This Court has summoned the declaration filed by Bindalal. A bare perusal of the same would show that Bindalal claimed 2,000 sq. meters for himself and his minor son, which is not permissible. When fourth petitioner was declared as minor son of Bindalal, a

verification was made in the declaration under Section 6(1) of the Act and an affidavit was given by third respondent, it would not be possible to give importance to the school leaving certificate given by a private school. Therefore, to that extent, no interference is called for.

In the result, for the above reasons, this writ petition is partly allowed. The order of third respondent as confirmed by second respondent is modified holding that petitioners 1 to 3 would be entitled to retain vacant land to an extent of 1,000 sq. meters each and petitioner No.5 would be entitled to retain 1,000 sq meters and they are declared to be surplus vacant holders of 331.50 sq. meters. There shall be no order as to costs.

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(**V.V.S.RAO, J**)

31st August, 2007
ghn